

## **Assembly Bill No. 143**

### **CHAPTER 161**

An act to amend Section 496 of the Penal Code, relating to crimes.

[Approved by Governor August 2, 1997. Filed with  
Secretary of State August 4, 1997.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 143, Cunneen. Crimes: receiving stolen property.

Under existing statutory law, every swap meet vendor, as defined, and every person whose principal business is dealing in or collecting used or secondhand merchandise or personal property, and every agent, employee, or representative of that person, who buys any property that has been stolen under circumstances that should cause the person to make reasonable inquiry to ascertain that the person from whom the property was bought had the legal right to sell it, without making reasonable inquiry, is presumed to have bought the property knowing it to have been stolen. However, the California Supreme Court in *People v. Roder*, 33 Cal. 3d 491, held that this provision should be construed as authorizing only a permissive inference, not a mandatory presumption. The offense of receiving stolen property under these circumstances is punishable as either a felony or a misdemeanor, except where the district attorney or grand jury determines in the case where the value of the property does not exceed \$400 that it would be in the interests of justice to specify in the accusatory pleading that the offense shall be a misdemeanor.

This bill would repeal this presumption, make the offense under the above circumstances punishable as only a misdemeanor if the value of the property does not exceed \$400, and provide that the offense applies to every person whose principal business is dealing in or collecting any merchandise or personal property, not just used or secondhand merchandise or personal property. By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. Section 496 of the Penal Code is amended to read:

496. (a) Every person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment in a state prison, or in a county jail for not more than one year. However, if the district attorney or the grand jury determines that this action would be in the interests of justice, the district attorney or the grand jury, as the case may be, may, if the value of the property does not exceed four hundred dollars (\$400), specify in the accusatory pleading that the offense shall be a misdemeanor, punishable only by imprisonment in a county jail not exceeding one year.

A principal in the actual theft of the property may be convicted pursuant to this section. However, no person may be convicted both pursuant to this section and of the theft of the same property.

(b) Every swap meet vendor, as defined in Section 21661 of the Business and Professions Code, and every person whose principal business is dealing in, or collecting, merchandise or personal property, and every agent, employee, or representative of that person, who buys or receives any property of a value in excess of four hundred dollars (\$400) that has been stolen or obtained in any manner constituting theft or extortion, under circumstances that should cause the person, agent, employee, or representative to make reasonable inquiry to ascertain that the person from whom the property was bought or received had the legal right to sell or deliver it, without making a reasonable inquiry, shall be punished by imprisonment in a state prison, or in a county jail for not more than one year.

Every swap meet vendor, as defined in Section 21661 of the Business and Professions Code, and every person whose principal business is dealing in, or collecting, merchandise or personal property, and every agent, employee, or representative of that person, who buys or receives any property of a value of four hundred dollars (\$400) or less that has been stolen or obtained in any manner constituting theft or extortion, under circumstances that should cause the person, agent, employee, or representative to make reasonable inquiry to ascertain that the person from whom the property was bought or received had the legal right to sell or deliver it, without making a reasonable inquiry, shall be guilty of a misdemeanor.

(c) Any person who has been injured by a violation of subdivision (a) or (b) may bring an action for three times the amount of actual damages, if any, sustained by the plaintiff, costs of suit, and reasonable attorney's fees.

(d) Notwithstanding Section 664, any attempt to commit any act prohibited by this section, except an offense specified in the



accusatory pleading as a misdemeanor, is punishable by imprisonment in the state prison, or in a county jail for not more than one year.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

